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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220292
Party	Defendant The Spark Agency, Inc.
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Submission	Motion to Amend/Amended Answer or Counterclaim
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Swatch AG (Swatch SA) (Swatch Ltd))	
Opposer,)	
)	
v.)	Opposition No. <u>91220292</u>
)	
The Spark Agency, Inc.)	
Applicant.)	
_____)	

**APPLICANT’S ANSWER TO OPPOSER’S AMENDED NOTICE OF OPPOSITION
AND APPLICANT’S AMENDED COUNTERCLAIM FOR CANCELLATION**

In answer to the Amended Notice of Opposition filed by Opposer Swatch AG (Swatch SA) (Swatch Ltd), Applicant The Spark Agency, Inc. states the following:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Amended Notice of Opposition and, accordingly, denies each and every allegation set forth therein.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Amended Notice of Opposition and, accordingly, denies each and every allegation set forth therein.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Amended Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Amended Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Amended Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

6. Applicant denies each and every allegation set forth in Paragraph 6 of the Amended Notice of Opposition.

7. Applicant denies each and every allegation set forth in Paragraph 7 of the Amended Notice of Opposition.

8. Applicant denies each and every allegation set forth in Paragraph 8 of the Amended Notice of Opposition.

9. Applicant denies each and every allegation set forth in Paragraph 9 of the Amended Notice of Opposition.

10. Applicant denies each and every allegation set forth in Paragraph 10 of the Amended Notice of Opposition.

11. Applicant denies each and every allegation set forth in Paragraph 11 of the Amended Notice of Opposition.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Amended Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Amended Notice of Opposition and, accordingly, denies each and every allegation set forth therein.

14. Applicant denies each and every allegation set forth in Paragraph 14 of the Amended Notice of Opposition.

15. Applicant admits the allegations set forth in Paragraph 15 of the Amended Notice of Opposition.

16. Applicant admits the allegations set forth in Paragraph 16 of the Amended Notice of Opposition.

17. Applicant admits only that the Board held that Applicant's application Serial No. 77/505539 for the mark SW:TCH was not entitled to registration. Applicant denies each and every remaining allegation set forth in Paragraph 17 of the Amended Notice of Opposition.

18. Applicant admits the allegations set forth in Paragraph 18 of the Amended Notice of Opposition.

19. Applicant denies each and every allegation set forth in Paragraph 19 of the Amended Notice of Opposition.

20. Applicant denies each and every allegation set forth in Paragraph 20 of the Amended Notice of Opposition.

21. Applicant denies each and every allegation set forth in Paragraph 21 of the Amended Notice of Opposition.

DENIAL OF PRAYER FOR RELIEF

Applicant denies that Opposer is entitled to any of the relief sought in its prayer for relief against Applicant.

AMENDED COUNTERCLAIM FOR CANCELLATION

1. Opposer is ostensibly the owner of U.S. Registration No. 3,799,562 for the mark SWATCH for “management of business; advertising agencies; computer assisted processing of data derived from the timing of sporting activities for use in education, entertainment and publicity,” in International Class 35.

2. Registration 3,799,562 was initially filed as an intent-to-use application on December 13, 2002 and assigned Serial Number 78194325.

3. Opposer filed two extensions of time to file a statement of use.

4. On April 30, 2009, Opposer filed a response to the Notice of Allowance requesting the deletion of reliance on §1(b) and claiming under §44 the homeland Swiss Registration #408332 issued in 1993 and renewed in 2003.

5. Application 78194325 issued to registration on June 8, 2010.

6. In its Amended Notice of Opposition, Opposer has pleaded ownership of U.S. Registration No. 3,799,562 for the mark SWATCH as a basis for its opposition against the registration of Applicant’s SWITCH mark (Serial No. 86/267771).

7. Upon information and belief, Opposer has made no use of its SWATCH mark in the United States in connection with any of the services recited in International Class 35 for at least the three years preceding the filing of this Counterclaim for Cancellation.

8. Upon information and belief, Opposer has no current intent to resume use of its SWATCH mark in connection with any of the services recited in International Class 35, and had no intent to resume use of its SWATCH mark in connection with any of the services recited in International Class 35 at the time it discontinued use of its mark.

9. Upon information and belief, Opposer had a lack of intent to begin or commence use of its SWATCH mark in connection with any of the services recited in International Class 35 before and/or after applying to register its SWATCH mark.

10. As a result of Opposer's failure to use its SWATCH mark in connection with any of the services recited in International Class 35, Opposer's intent not to resume use of its SWATCH mark in connection with any of the services recited in International Class 35, and Opposer's lack of intent to begin or commence use of its SWATCH mark in connection with any of the services recited in International Class 35 before and/or after applying to register its SWATCH mark, the SWATCH mark has become abandoned, both at common law and under the Lanham Act.

WHEREFORE, Applicant will be damaged by the continued registration of U.S. Registration No. 3,799,562 in International Class 35 and prays that the same be canceled pursuant to 15 U.S.C. §1064.

